

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
RICHARD S. MYERS, JR.
STITES & HARBISON PLLC
424 CHURCH STREET, SUITE 1800
NASHVILLE, TN 37219

PCT

WRITTEN OPINION

(PCT Rule 66)

Applicant's or agent's file reference 11636/020724		Date of Mailing (day/month/year) REPLY DUE within 2 months/days from the above date of mailing
International application No. PCT/US03/31390	International filing date (day/month/year) 03 October 2003 (03.10.2003)	Priority date (day/month/year) 03 October 2002 (03.10.2002)
International Patent Classification (IPC) or both national classification and IPC IPC(7): A61K 31/7048; A61P 31/10 and US Cl.: 536/6.5; 514/2		
Applicant UNIVERSITY OF MISSISSIPPI		

- This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
- This opinion contains indications relating to the following items:
 - ☒ Basis of the opinion
 - ☐ Priority
 - ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☐ Lack of unity of invention
 - ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Certain documents cited
 - ☐ Certain defects in the international application
 - ☐ Certain observations on the international application

- The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

- The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 03 February 2005 (03.02.2005).

Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer <i>Jayce Bridges</i> Janet Andres Telephone No. 703-308-0196
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Form PCT/IPEA/408 (cover sheet)(July 1998)

DOCKET DATE: 10/3/04 - response
ASSIGNED BY: FV
DOCKETED BY: FV
DATE: 8/9/04

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

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2. This opinion contains indications relating to the following items:
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 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

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4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: **03 February 2005 (03.02.2005)**.

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WRITTEN OPINION

International application No.

PCT/US03/

I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
 pages 1-21, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☒ the claims:
 pages 22 and 23, as originally filed
 pages NONE, as amended (together with any statement) under Article 19
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☒ the drawings:
 pages 1-3, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages NONE, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. STATEMENT**

Novelty (N)	Claims <u>11</u>	YES
	Claims <u>1-10, 12-16</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-16</u>	NO
Industrial Applicability (IA)	Claims <u>1-16</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-10 12-16 lack novelty under PCT Article 33(2) as being anticipated by U.S. patent 5,776,904. The '904 patent teaches administration of amphotericin B to treat fungal infections and teaches lipid formulations as well as intravenous administration.

Claims 1-3, 6-10, 12, 13, 15, and 16 lack novelty under PCT Article 33(2) as being anticipated by U.S. patent 4,902,789. The '789 patent teaches HPLC purification of amphotericin B and its use in treating fungal infections.

Claims 1-16 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

-----NEW CITATIONS-----

US 5,776,904 A (SEKI et al.) 07 July, 1998, see column 1, lines 15-25, and column 6, lines 4-44.

WRITTEN OPINION.

International application No.
PCT/US03/000000

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.